

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER

Docket No. MC2013-57

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER (MC2013-57)

Docket No. CP2013-75

**MOTION OF THE UNITED STATES POSTAL SERVICE  
FOR ACCESS TO NONPUBLIC MATERIALS FILED BY  
GAMEFLY, INC. AND NETFLIX, INC.**

(January 29, 2014)

Pursuant to 39 C.F.R. § 3007.40, the United States Postal Service ("Postal Service") respectfully requests access to: (1) the nonpublic version of the January 17 answers of GameFly, Inc. ("GameFly") to Chairman's Information Request No. 2; and (2) the nonpublic version of the January 16 response of Netflix, Inc. ("Netflix") to Chairman's Information Request No. 3. Both Netflix and GameFly state that the nonpublic materials contain commercially sensitive information related to their mailing volumes, subscribers, and revenues/costs.<sup>1</sup>

The Postal Service requires access to the materials so that it may evaluate their impact on its proposal to create a Competitive Round-Trip Mailer product. These materials will also inform whether the Postal Service needs to respond to the *Motion of Gamefly, Inc. for Opportunity to Comment on January 17, 2014, Responses to*

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<sup>1</sup> See Application of Netflix, Inc. for Nonpublic Treatment of Portions of its Response to Chairman's Information Request No. 3 (January 16, 2014); Application of GameFly, Inc. for Nonpublic Treatment of Portions of its Answers to Chairman's Information Request No. 2 (January 17, 2014).

*Chairman's Information Requests*, filed on December 24, 2013. Disclosure of the nonpublic information to the Postal Service will not cause commercial injury to any party.

The Postal service designates the following individuals as its reviewing representatives pursuant to Appendix A to Part 3007 of 39 C.F.R.:

- Cynthia Sanchez-Hernandez – Vice President, Pricing
- Thomas J. Foti – Manager, Mailing Services
- Elke Reuning-Elliott – Manager, New Solutions
- Steven W. Monteith – Manager, Pricing
- Nina Yeh – Pricing Economist
- Ankit J. Mody – Managing Consultant, IBM
- Kevin Calamoneri – Deputy General Counsel, Headquarters
- R. Andrew German – Managing Counsel, Legal Strategy
- Richard T. Cooper – Managing Counsel, Corp. & Postal Business Law
- Daniel J. Foucheaux – Chief Counsel, Pricing & Product Support
- David Rubin – Attorney
- John F. Rosato – Attorney
- James M. Mecone – Attorney
- Kyle Coppin – Attorney

The above listed individuals have been involved in making decisions or performing analyses related to these proceedings. The Postal Service is authorized to state that counsel for GameFly has consented to this motion. Counsel for Netflix has been informed of the Postal Service's intention to file this motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing and Product Support

John F. Rosato

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-8597, Fax -6187  
[John.F.Rosato@usps.gov](mailto:John.F.Rosato@usps.gov)  
January 29, 2014

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

GameFly, Inc. ("GameFly") and Netflix, Inc. ("Netflix") have filed certain non-public materials in Commission Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*.

- (1) The nonpublic version of the January 17, 2014, answers of GameFly to Chairman's Information Request No. 3.
- (2) The nonpublic version of the January 16, 2014, response of Netflix to Chairman's Information Request No. 3.

GameFly and Netflix request confidential treatment of the materials (hereinafter "these materials").

The following protective conditions limit access to these materials. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for GameFly and Netflix.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under rule 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
  - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and

- (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
  5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
  6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*.
  7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
  8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
  9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
  10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify GameFly and Netflix of the pendency of the subpoena or order to allow them time to object to that production or seek a protective order.

## CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Docket No. MC2013-57, *Competitive Product List – Adding Round-Trip Mailer* by Netflix, Inc. and GameFly, Inc., has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. MC2013-57, *Competitive Product List – Adding Round-Trip Mailer*. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name Cynthia Sanchez Hernandez

Firm USPS

Title VP Pricing

Representing USPS

Signature C-SH

Date Jan 28, 2014

## CERTIFICATION

The undersigned represents that:

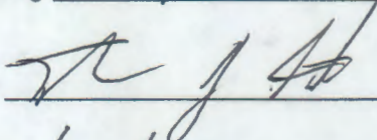
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Name THOMAS J. FOTI

Firm U.S. POSTAL SERVICE

Title MANAGER, MAILING SERVICES

Representing US PS

Signature 

Date 1/28/2014



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Name Elke Renning Elliott  
Firm US Postal Service  
Title Manager ; New Solutions  
Representing U.S. Postal Service  
Signature Elke Renning Elliott  
Date January 28, 2014



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Name Steven W. Monteth

Firm US Postal Service

Title Manager, Pricing

Representing US Postal Service

Signature Steven W. Monteth

Date 1/28/2014

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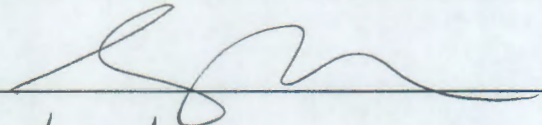
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Name NINA YEH

Firm US Postal Service

Title Pricing Analyst

Representing U.S. Postal Service

Signature 

Date 1/28/14



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Name

ANKIT. J MODY

Firm

IBM

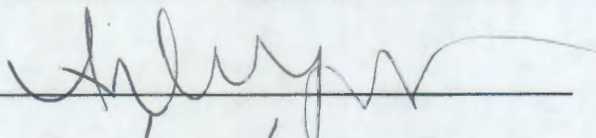
Title

Managing Consultant

Representing

U.S. Postal Service

Signature



Date

01/28/2014

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Name Kevin Calanone

Firm Postal Service

Title Deputy General Counsel

Representing Postal Service

Signature [Signature]

Date 1/29/14



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Name R. ANDREW GERMAN

Firm U. S. POSTAL SERVICE

Title MANAGING COUNSEL

Representing U. S. POSTAL SERVICE

Signature R. Andrew German

Date 1/28/14



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Name Richard T. Cooper

Firm \_\_\_\_\_

Title Managing Counsel, Corporate & Postal Business Law

Representing United States Postal Service

Signature Ant 2 Logm

Date 1-28-14

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Name DANIEL J. FOUCHEAUX, JR.

Firm U.S. Postal Service

Title Chief Counsel, Pricing & Product Development

Representing U.S. Postal Service

Signature Daniel J. Fouchaux, Jr.

Date 1/28/2014



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Name DAVID RUBIN

Firm U.S. POSTAL SERVICE

Title ATTORNEY

Representing U.S. POSTAL SERVICE

Signature David H. Rubin

Date JANUARY 29, 2014

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Name John F. Rosato

Firm U.S. Postal Service

Title Attorney

Representing U.S. Postal Service

Signature John F. Rosato

Date 1/28/2014



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Name James M. Meade

Firm United States Postal Service

Title Attorney

Representing United States Postal Service

Signature James M. Meade

Date 1/29/2014



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Name Kyle Coppin

Firm USPS

Title Attorney

Representing USPS

Signature Kyle Coppin

Date 1/28/14